FILE COPY

FILED
NOV 3 1
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 72-111

JEFFREY PHILLIP BLOOM, BARRY JAY KANTOR and BRUCE ANDREW ROBIN,

Petitioners,

-vs-

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL THIRD DISTRICT OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

ROBERT L. SHEVIN
Attorney General

WILLIAM L. ROGERS
Assistant Attorney General

State of Florida
State Office Building (530)
1350 N. W. 12th Avenue
Miami, Florida 33136

TOPICAL INDEX TO BRIEF

Page

OPINION BELOW. 1

JURISDICTION 1

QUESTION PRESENTED 1

STATEMENT OF THE FACTS 1

ARGUMENT 2-4

CONCLUSION 4

TABLE OF CASES

Boykin v. Alabama, 395 U.S. 238, 23 L.ed.2d 274, 89 S.Ct. 1709, (1969). 2, 4

United States v. Frontero, 452 F.2d 406 (5 Cir.,1971). 3-4

APPENDIX

Pages i-ix

OPINION BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at 261 So.2d 578 (Fla., 3 DCA, 1972) and is attached to the petition for writ of certiorari as Appendix "A". The opinion of the Supreme Court of Florida denying the petition for writ of certiorari is reported at 263 So.2d 828 (Fla., 1972), and is attached as Appendix "B".

JURISDICTION

The jurisdictional requisites are set forth in the petition.

QUESTION PRESENTED

Respondent respectfully rephrases the petitioners' Question Presented as follows:

> Is it a violation of a criminal defendant's rights for the trial court to accept his guilty plea when the trial court established a record adequate to disclose that the defendant tendered his guilty plea voluntarily and understandingly?

STATEMENT OF THE FACTS

The respondent respectfully adopts petitioners' Statement of the Facts as substantially reflecting the proceedings in the trial court. However, the respondent has appended its Appendix "A" to show the plea colloquy of the petitioners.

ARGUMENT

The petitioners contend that under the authority of Boykin v. Alabama, 395 U.S. 238, 23 L.ed.2d 274, 89 S.Ct. 1709 (1969), his plea colloquy was inadequate. It is submitted, however, that the record in the instant case reflects that a full and complete plea colloquy, as contemplated by Boykin, supra, did in fact occur, thereby obviating the federal question allegedly raised.

In Boykin v. Alabama, this Honorable Court addressed itself to a record in which no plea colloquy appeared, in which the judge asked no questions of the defendant, and in which the defendant at no time addressed the court. On these facts the Court held that it was error on the face of the record for the trial judge to accept a guilty plea without an affirmative showing that it was intelligent and voluntary (395 U.S. at 242).

By contrast, the record in the instant case reveals a complete and thorough inquiry into the defendants' understanding of the ramifications of their pleas. The Boykin Court did not set forth a list of questions of a required procedure for ascertaining the state of the defendant's understanding. Instead it simply required that the trial judge quiet his doubts that the plea offered may not be knowing and voluntary, and that a record of this exchange with the defendant be left to forestall collateral proceedings.

In United States v. Frontero, 452 F.2d 406 (5 Cir.,1971), defendant Kelly argued, as do the instant petitioners, that his plea was invalid as he was not informed of the constitutional rights waived as a consequence of his guilty plea. (Id. at 415). Defendant Kelly asserted, as do petitioners at bar, that he should have been informed that his plea constituted a waiver of his right to confront his accusers and of his privilege against compulsory self-incrimination. Each of these contentions was denied by the court for the following reasons:

> "This Court is, however, aware of no precedent, from the Supreme Court or elsewhere, for the proposition that due process requires that a defendant be informed of each and every right which is waived by a guilty plea or that the waiver of these rights is a 'consequence,' within the meaning of Rule 11, of which a defendant must be personally informed before a guilty plea may be accepted. Carrying Kelly's argument to its logical conclusion, the court, before accepting a guilty plea, would be required to inform a defendant of his right to a speedy and public trial, his right to an impartial jury, his right to compulsory process for obtaining witnesses, his right to be free from cruel and unusual punishment, his right to be free from unreasonable searches and seizures, his right to have excluded from the trial any evidence illegally seized,

> and many more. We do not read Rule 11 as requiring this; nor do we feel that due process requires this."

Id. at 415.

It is submitted that the plea colloquy below established beyond any doubt that the defendants knew the charges to which they were pleading and were aware of the consequences of their action. Under the law as announced in Boykin, supra, the trial judge was required to do no more.

CONCLUSION

It is respectfully submitted that the decisions of the state courts in the instant cause do not conflict, but are in harmony with applicable federal law and the decisions of this Court. A substantial federal question has therefore not been presented, leaving the petition without jurisdictional basis.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

WILLIAM L. ROGERS
Assistant Attorney General

State of Florida

Counsel for the Respondent.

A P P E N D I X

Pages 50 through 59 of the transcript of testimony had at trial.

"MR. O'DONNELL: At this time, your Honor, the State rests.

"MR. GOLDMAN: At this time, your Honor, the defendant moves for a directed verdict of acquittal.

"THE COURT: Denied.

"MR. GOLDMAN: All right.
Barry -- can we have just a second, Judge?

(Thereupon a short recess was taken after which the following proceedings were had:)

"MR. GOLDMAN: Your Honor --

"THE COURT: Yes.

"MR. GOLDMAN: We are not going to put on any testimony but we will renew our motion and see what reaction we get out of the court.

"THE COURT: You won't get any reaction except I'm going to deny it.

"MR. GOLDMAN: Your Honor, Barry and I just discussed this and we will withdraw the plea of not guilty and enter a plea of nolo contendre.
It is tantamount to a guilty plea but we will plead nolo.

"THE COURT: As charged?
All right. I don't want to enter anything until I finish with the other case.

Let me just ask him this: Do you understand -- How old is he?

"MR. GOLDMAN: He is 20. He is a student.

"THE COURT: Parents here?

"MR. GOLDMAN: No, I am in touch with them.

"THE COURT: The parents know about the case?

"MR. GOLDMAN: Everything.

"THE COURT: You understand that you have gone through the entire trial at this point and at the conclusion thereof, prior to the court making any determination of the issue, you are withdrawing your plea of not guilty and entering a plea of nolo contendre; do you understand that?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Do you understand that means you do not contest the truth of the charge against you?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Do you understand that that is a felony in this State, punishable of up to seven years in the State penitentiary for a first offense?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Do you understand that you are entitled to conclude this trial, if you wanted to, rather than enter the plea?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Have you had the opportunity to discuss this with your attorney?

"DEFENDANT BLOOM: The case, sir?

"THE COURT: Have you discussed it with your attorney?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Has anyone made you any promise, threat, coerced, forced, or made you enter this plea against your will?

"DEFENDANT BLOOM: No.

"THE COURT: State ready on 5832, A, B, and C?

"MR. O'DONNELL: Yes, your Honor, the State is ready.

"THE COURT: I am going to hold off until I get all cases disposed of.
Let's have the defendants Kantor and Robin before the court.
All witnesses.
Let me see the Information on 5832.

"MR. GOLDMAN: I want to say this, Judge, I think I performed my duty as an attorney, as far as I went.
These boys are real good kids and they admitted to me that and we are going to plead.

"THE COURT: To what?

"MR. GOLDMAN: To the possession here, now, Judge.

"THE COURT: Is the State going to abandon the second count?

"MR. O'DONNELL: Under most conditions I would but I have -- it is a misdemeanor. There are some interested parties.

I, in good faith, cannot abandon. We would like the plea as charged.

"THE COURT: Take a couple of minutes and discuss it.

Five minute recess.

(Thereupon a recess was taken after which the following proceedings were had:)

"THE COURT: What did you decide?

"MR. O'DONNELL: Will you plead as charged?

"MR. GOLDMAN: We can't. They admitted what they admitted but not that.

"THE COURT: Swear the witnesses.

(Thereupon the witnesses present were duly sworn.)

"MR. O'DONNELL: Are we proceeding on just two counts for trial?

"THE COURT: I don't know.

"MR. O'DONNELL: What is the status? Are you pleading to count one or are we trying count two or what?

"MR. GOLDMAN: We will drop it as to two, okay, as to one. The boys are telling the truth. There is no sense going through all this.

"THE COURT: He doesn't want to drop it.

"MR. O'DONNELL: You mean as to one defendant?

"MR. GOLDMAN: Two defendants. One is admitting it to you.

"MR. O' DONNELL: One individual?

"MR. GOLDMAN: One individual says yes, whatever he said. The other two --

"MR. O'DONNELL: Which of the two that aren't?

"MR. GOLDMAN: Kantor and Bloom.

"MR. O'DONNELL: As to Kantor and Bloom the State will abandon count two.

"THE COURT: All right.
Apparently this charge doesn't compute because it comes out unlawful use of a credit card.
All right, now, first of all Jeffrey Bloom, do you understand that you are now pleading guilty, through your counsel, to a charge of possession of narcotics?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: You understand that this is a felony in this State punishable by up to five years in the state prison?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Have you had the opportunity to discuss this with Mr. Goldman, before you entered the plea?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Again, do you understand that you have a right to a trial either before the Court or a jury if you wanted a trial?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Do you understand that when you plead guilty you admit the truth of the charge and waive your right to a trial and appeal?

"DEFENDANT BLOOM: Yes.

"THE COURT: Has anyone made you any promise, threat, coerced, forced or made you enter this plea against your will?

"DEFENDANT BLOOM: No, sir.

"THE COURT: Mr. Kantor, how old are you?

"DEFENDANT KANTOR: Twenty-one.

"THE COURT: Have you had the opportunity to discuss this with Mr. Goldman?

"DEFENDANT KANTOR: Yes, sir.

"THE COURT: Do you understand that you are entering a plea of guilty to a felony punishable by up to five years in the State prison?

"DEFENDANT KANTOR: Excuse me, which charge is that?

"THE COURT: Possession of narcotics.

"DEFENDANT KANTOR: That is the one?

"MR. GOLDMAN: That is the one, the possession, the second one.

"DEFENDANT KANTOR: Yes.

"THE COURT: Do you understand that you have a right to a trial, either before the court or a jury if you wanted a trial?

"DEFENDANT KANTOR: That's right.

"THE COURT: You realize, by pleading guilty, you admit the truth of the charge and waive that right and the right to appeal?

"DEFENDANT KANTOR: Yes.

"THE COURT: Has anyone made you any promise, threat, forced, coerced or made you enter this plea against your will?

"DEFENDANT KANTOR: No, sir.

"THE COURT: All right.

Mr. Robin, do you understand that you have entered a plea of guilty to the Information as charged in both counts?

"DEFENDANT ROBIN: Yes, sir.

"THE COURT: How old are you?

"DEFENDANT ROBIN: Twenty.

"THE COURT: Are your parents aware of this case?

"DEFENDANT ROBIN: Yes. They Are.

"THE COURT: Are they here today?

"DEFENDANT ROBIN: No, sir.

"THE COURT: Have you had the opportunity to discuss it with Mr. Goldman?

"DEFENDANT ROBIN: Yes, sir.

"THE COURT: You have heard what I told the other defendants?

"DEFENDANT ROBIN: Yes.

"THE COURT: You understand you can be sent to state prison?

"DEFENDANT ROBINS: Yes.

"THE COURT: Has anyone made you

any promise, threat, forced, coerced or made you plead guilty against your will?

"DEFENDANT ROBINS: No.

"THE COURT: Let me have a proffer from the state as to the quantity and amount involved in count one.

"MR. O'DONNELL: The quantity, your Honor, 15 spoons of cocaine.

"THE COURT: And as to count two?

"MR. O'DONNELL: Your Honor, may we introduce the evidence on the plea?

"THE COURT: Introduce it on a plea, State's one.

"MR. O'DONNELL: All right.

(Thereupon the articles referred to were admitted as State's exhibit 1, in evidence.)

"MR. O'DONNELL: This is Mr. Speranza, from the telephone company. I think he can look and tell you what the device is and how it operates, * * *."

PROOF OF SERVICE

This is to certify that I have forwarded three copies of the foregoing Brief of Respondent in Opposition and Appendix to counsel for petitioners, Pollack, Yocom, & Haggard, 1700 Northwest 7th Street, Miami, Florida 33125, by mail, this_____day of November, 1972.

WILLIAM L. ROGERS
Assistant Attorney General

State Office Building (530)
1350 N. W. 12th Avenue
Miami, Florida 33136

Of Counsel.